Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

03-84 COPY

In the matter of	)
Petition for Declaratory **Ruling**	)
IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION 8:00-CV-1231-T-17TBM	)
LINDA THORPE	)
Representative Plaintiff,	)
vs.	)
GTE CORPORATION; GTE FLORIDA INCORPORATED, AT&T CORP., SPRINT-FLORIDA, INCORPORATED, and MCI WORLDCOM NETWORK SERVICES, INC.	)
Defendants.	)
CLASS ACTION COMPLAINT	)

PETITION FOR DECLARATORY RULING ON ISSUES CONTAINED IN "THORPE vs. GTE", UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, CASE NO. 8:00-CV-1231-T-17EAJ

COMES NOW, the Petitioner, Plaintiff in "THORPE vs. G T E , United States District Court for the Middle District of Florida, Case No. 8:00-CV-1231-T-17EAJ (hereinafter referred to as the "GTE Class Action"), by and through undersigned counsel, and pursuant to the Order of Honorable Elizabeth A. Kovachevich, United States District Judge, and hereby requests the Commission to issue a declaratory ruling as to the issues more particularly set out below. A copy of the Complaint filed in the GTE Class Action **is** attached as Exhibit " A hereto (hereinafter referred to as the

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"Complaint"), and a copy of the said Order is attached as Exhibit **"B"** hereto (hereinafter referred **to** as the "Order").

INTRODUCTION

I. FACTUAL BACKGROUND

Sometime in 1997 or 1998, at the request of Plaintiff, GTE installed an extra phone line in her home. It was Plaintiffs intention to use the line almost exclusively for an answering machine and not for making telephone calls. Upon the installation of said line, GTE, without discussion or communication of any kind with Plaintiff, arbitrarily assigned AT&T as Long Distance Service Provider for the subject phone line. In or about December of 1998, Plaintiff acquired a computer system and elected to use the subject phone line as a "dedicated line" to be used exclusively over her computer modem for locally accessible computer services. Upon receipt of her January 4, 1999 bill relating to the subject phone line, Plaintiff noted that she had been charged a minimum for long distance service. Since she would not need long distance service over the subject line as it would be used exclusively for dialing local computer services, Plaintiff phoned GTE and requested that her long distance service be terminated as to the subject line. Representatives and agents of GTE told Plaintiff that she was required to have long distance service associated with the subject line, whether or not she had any use for it. Sometime in early March of 1999, Plaintiff received her March 4, 1999 phone bill from GTE. Again, although Plaintiff had used the subject line exclusively for local modem dial-ups, this bill reflected charges from AT&T for long distance services Plaintiff phoned GTE to complain that she was being billed for long distance service even though she was not using it and had no use for it. Agents and representatives of GTE, again, stated to Plaintiff that long distance service is required, however, they advised Plaintiff that if she would switch to GTE as her long

distance service provider, there would be no minimum monthly service charge such as that charged by AT&T.

As GTE had represented there would be no charge for its long distance service, Plaintiff elected to switch to GTE as her long distance service provider. GTE acknowledged this change by way of letter dated March 31, 1999. For the four months next ensuing, Plaintiff was not billed for long distance service; however, her September **4,** 1999 bill and all subsequent bills reflect a $3.00 minimum charge for long distance service.

In or about **April** of 1999, Plaintiff arranged with Defendant GTE for computer Internet services over the subject line. All Defendants offer similar "online access" services either directly or through affiliates. All Defendants are fully aware that home computers using phone lines **as** modem lines are nearly exclusively used by persons such as Plaintiff utilizing Internet and other services which require a local dial up only and do not require long distance service. (Certain Defendants are local exchange carriers and are hereinafter collectively referred to as "Local Service Providers"; certain Defendants are interexchange carriers and are hereinafter referred to **as** "Long Distance Providers".)

Defendants, Local Service Providers, make no effort to disclose to consumers that it is not necessary to have long distance service for a phone line being used for a computer modem; instead, they routinely and arbitrarily assign such lines to Defendants, Long Distance Providers. Only where a consumer discovers a charge on a monthly bill, contacts Defendants and insists that the long distance service be terminated will Defendants cancel the long distance service, but without refund. Such "negative option" or "default" sales for the said unnecessary and unwanted long distance services **are** made on an ongoing basis by Defendants. Defendants' customers who did not

affirmatively request to have services discontinued were deemed to have "contracted" for and were charged for the unnecessary and unwanted long distance service in their monthly bills.

In none of these purported "contracts" did Defendants set forth the essential terms, conditions, limitations, and exclusions in such a manner as to form a definite and certain contract offer capable of acceptance. Defendants are fully aware that because they use the deception of a "negative option" or "default" contract for the unnecessary and unwanted long distance service, the customer, statistically, may not realize that he or she is being billed for and is paying for the unnecessary and unwanted long distance service for an extended period of time. Defendants were fully aware that they were charging Plaintiff **for** the unnecessary and unwanted long distance service although Plaintiff had not requested or contracted for same.

II. STATUS OF CASE

In response to GTE's conduct, Plaintiff filed the Complaint in Florida State Circuit in and for Hillsborough County, alleging a violation of Florida's Unfair and Deceptive Trade Practices Act for both injunctive relief and damages **(See** Count I and II **of** the Complaint, respectively), forrestitution ***(See*** Count III of the Complaint), for breach of contract ***(See*** Count IV of the Complaint), and for breach of duty of good faith and fair dealing ***(See*** Count **V** of the Complaint). Defendants filed a Notice of Removal and the case was removed to the Federal District Court for the Middle District of Florida. In the Notice of Removal, GTE argued generally that Plaintiff's claims involved federal issues regarding Defendants' filed rates improperly cloaked **as** state law claims. **A** copy of the Notice of Removal is attached as Exhibit " C hereto. Plaintiff filed her Motion to Remand and argued that her claims were state law claims properly brought before a state tribunal. **A** copy **of** the Motion to Remand is attached as Exhibit **"D"** hereto. GTE filed **a** Dispositive Motion to Dismiss in

which it argued primarily that Plaintiffs claims constituted a direct challenge to interstate long distance telephone services which **are** regulated by the Federal Communications Act, namely: (a) the provision of and charges for long distance access by local exchange carriers, such as **GTE** Florida, and (b) the provision of and charges for long distance services by interexchange carriers such as AT&T. A copy of this Dispositive Motion to Dismiss and accompanying Memorandum of Law is attached as composite Exhibit **"E"** hereto. Plaintiff filed her Response to GTE's Dispositive Motion to Dismiss and argued generally, (a) that the filed rate doctrine did not apply to the facts and claims of the Complaint, **(b)** that her claims were not preempted by the Federal Communications Act, (c) that Plaintiff was not challenging Defendant's rates but was challenging Defendants' practice of not allowing a consumer to select a long distance carrier nor affording the consumer the choice of not having a long distance carrier, and (d) the Federal Communications Act does not require that long distance service be forced upon a local service customer. A copy of the Response to the Dispositive Motion to Dismiss is attached as Exhibit "F" hereto.

III. ISSUES

Pursuant to the Order, Petitioner is requesting a determination as to the following issues:

I. Are the state claims raised by the Plaintiffs in the **GTE** Class action complaint preempted by the filed Federal Communications Act (the "Act"), giving the Federal Communications Commission exclusive jurisdiction?

II. May Defendants, Local Service Providers, provide "local service only" to their customers, or must they, by virtue of their filed **tariff** rates or otherwise, in all events and as to all lines, couple local service with "long distance" service provided by an interexchange carrier, even where the customer has no need for long distance service on a given line?

III. If long distance service is not required to be coupled with local service in all events and as to all lines, does the practice of coupling such service violate the Act?

IV. ARGUMENT

a. The state claims raised by the Plaintiffs in the GTE Class action complaint are not preempted by the Federal Communications Act (under the "filed rate doctrine" or otherwise).

It is clear from the factual allegations contained in the complaint, that at no time does the Plaintiff raise any issues regarding rate-setting or tariffs. The Plaintiff is complaining, not of the right of either a local exchange carrier or an interexchange carrier to charge a fee for local or long distance services over a phone line, but rather, is complaining of the imposition of long distance service and the related (minimum monthly) long distance service charge on the consumer knowing that such phone line was being used for local calls only as a computer modem line and that such long distance service will not be needed or utilized. It is clear that the Plaintiff is not challenging the Defendants' charges, but is challenging the practice of the Defendants in "slamming" an interexchange carrier and a long distance fee when not consented to or contracted for by the customer, i.e., through a negative option.

Plaintiffs' claims are clearly not preempted by the Act.

In an analogous situation, the FCC has held that the Act does not bar Plaintiffs from raising state claims against wireless carriers for "rounding up" per minute billing charges. (See the Memorandum Opinion and Order from the FCC dated May 25,2001, from ***White v.*** *GTE* attached as Exhibit "G" hereto.) In similar suits, other Defendants have previously argued in United States District Courts for the exercise of federal jurisdiction and federal preemption of class actions contending that federal law, specifically the Act, completely preempts state law claims challenging

the deceptive practice of common carriers which provide interstate telephone service. In fact, the U.S. District Court for the Northern District of Texas held that "the FCA does not preempt the claims at issue in this case" and that "this action arises solely out of other terms and conditions of commercial mobile service and is not preempted by the FCA." ***(See*** Exhibit "H": Order, Judge Mary Lou Robinson, August 29, 1996). Further, both the plain language and legislative history of the Federal Communications Act clearly indicate that the statute was not intended to prevent the maintenance of this class action. H.R. Report No. 103-111, 103rd Congress, 1st Session at 261. On the contrary, the Act contains a savings clause which expressly reserves the right to bring this type of action. 47 U.S.C. § 414: ***"nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies."*** 47 U.S.C. § 414. (emphasis added).

The savings clause thus preserves state law "causes of action for breaches of duties distinguishable from those created under the Act, as in the case of a contract claim" Comtronics, *Inc. v.* Puerto *Rico* Telephone Company, 553 F.2d 701, 708 n.6 (1st Cir. 1977); *accord Am. Inmate* Phone System, 787 F.Supp. 852 at *856* (N.D.Ill. 1992) (explaining that the Communications Act does not preempt a state law contract claim where "the duties created by the verbal contract are distinct from the duties created by the Communications Act").

Courts, including the United States District Court for the Middle District of Florida ***(See*** Exhibit "I": Order dated October 31, 1999, in the matter of ***White vs.*** *GTE* Corp, *et al.*, Case No. 97-1859-CIV-T-26C), have consistently held that the Communications Act does *not* preempt state court claims for breaches of independent duties that neither conflict with specific provisions of the Act nor interfere with the Act's regulatory scheme. See *Weinberg v.* Sprint Corp., **165** F.R.D. **431** (D.N.J.

1996) (where court remanded consumer case complaining of non-disclosure of "rounding -up" billing practices because it was not an attack on billing rates); *In re Long Distance TelecommunicationsLitigation,* 831 F.2d 627,633 ***(6"*** Cir. 1987)(holdingthat the Communications Act preserved state law claims for fraud and deceit against a telecommunications carrier); *Bruss Company v. Allnet CommunicationServices, Inc.*, 606 F. Supp. 401,410-11(N.D.Ill. 1985) (holding that the Communications Act preserved state common law and statutory fraud claims); *Kellerman v. MCI Telecommunications Corp.,* 112 Ill.2d 428,493 N.E.2d 1045, 1051, 98 Ill. Dec. 24 (Ill. 1986) (holdingthat the CommunicationsAct preserved state law claims arising out of defendant's allegedly false advertising practices); *Am. Inmate Phone Systems, supra,* 787 F.Supp. At 856-59 (N.D.Ill. 1992) (holding that the Communications Act preserved state law contract and consumer fraud claims); *Cooperative Communications v. AT&T Corp.,* 867 F.Supp. 1511,1515-17 (D.Utah 1994) (holding that the Communications Act preserved state law claims for intentional interference with prospective economic relations, interference with contract, business disparagement, breach of covenant of good faith and fair dealing and unfair competition).

In the case below and as set out in the attached Exhibit " E , Defendants have argued that the subject billing practice is lawful, just and reasonable, and that there is complete federal preemption of any state law causes of action challenging such deceptive practices. That theory is dead wrong: numerous courts have held that federal law does not preempt claims like the Plaintiff's. In order to be completely preemptive of state law, a federal statute must do more than simply preempt state law which is inconsistent with the federal statutory scheme; the federal statute must occupy the entire field of regulation. *WisconsinPublic Intervenor v. Mortier,* 111S.Ct. 2476,2481,115 L.Ed.2d 532,

542-43 (1991). Far from occupying the field of regulation at issue in the present case, the federal statute upon which Defendants rely *expressly preserves* the kind of state law claims which Plaintiff has brought.

The statute in question is the Federal Communications Act. The Communications Act, passed in 1934, was enacted to "make available, as far as possible, to all the people of the United States a rapid, efficient, nationwide and worldwide wire and radio service with adequate facilities at reasonable charges . . ." 47 U.S.C. § 151. To that end, Congress placed common carriers providing interstate telephone service under the jurisdiction of the Federal Communications Commission (the "FCC"), and enacted a comprehensive regulatory scheme governing common carriers. For example, carriers are required to furnish telephone service upon reasonable request. § 201(a). They are also required to file tariffs regarding their rates, to charge reasonable rates, and to avoid unreasonable or discriminatory practices. *Id.* § 201-203. Congress also provided a ***general*** jurisdictional grant for federal courts to adjudicate controversies arising under the Communications Act:

> Any person claiming to be damaged by any common carriers subject to the provisions of this chapter may either make complaint to the commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.

Id. § *201.*

As the foregoing cases demonstrate, the plain purpose of both the Act in general and the savings clause in particular is to preserve the right to bring state law claims, provided that maintenance of such suits does not interfere with the Communications Act's requirement for the provision of uniformly reasonable, non-discriminatory telecommunications service to all Americans.

Comtronics, ***supra,*** 553 F.2d at 708 n.6 (1st Cir. 1977). State law claims based upon the breach of duties ***not*** imposed by the Communications Act, *e.g.*, breach of contract or unfair trade practices claims, obviously do not detract from the uniformity of the duties which the Act does impose.

The Plaintiffs in this action are alleging that Defendants' "slamming" practices violate Florida's Deceptive and Unfair Trade Practices Act, and are ***not*** challenging the reasonableness of the rates charged by Defendants for services properly and knowingly rendered pursuant to a contract with their customers. Plaintiffs are challenging Defendants' deceptive practices of slamming and non-disclosure. As broad as it is, the Communications Act does not purport to regulate specific sales strategies and marketing devices employed by telecommunication carriers. On the contrary, as one district court recently concluded

> the Communications Act is primarily concerned with the quality, price, and availability of the underlying service. Because allowing Cellular Dynamics to recover damages for any injuries it suffered as a result of MCI's allegedly fraudulent marketing strategies neither conflicts nor interferes with any provision, regulation, or policy underlying the Act, the court finds that plaintiffs' consumer fraud claim is not preempted.

Cellular Dynamics, Inc. v. MCI Telecommunications Corporation, Case No. 94C3126, Northern District of Illinois, 1995 U.S. District LEXIS 4798.

In essence, Defendants complete preemption argument amounts to an arrogant assertion that the Communications Act gives common carriers like Defendants a federal license to defraud its customers with no fear of exposure under state law. Clearly, there is no inconsistency whatsoever between the Communications Act and Plaintiffs' state law claims directed to the deceptive practices set forth in Plaintiffs Complaint. Even if there were some such inconsistency, the Federal

Communications Act, which expressly preserves the right *to* pursue state remedies consistent with the Act, obviously does not completely displace state law.

Accordingly, Plaintiff requests that the FCC make a determination that the Act does not preempt Plaintiffs state causes of action against the Defendants in the GTE class action lawsuit.

b. Where the customer has no need for long distance service on a given line, local exchange carriers are not required to couple local service with "long distance" service provided by an interexchange carrier, by virtue of their filed tariff rates or otherwise, in all events and as to all lines, and can and lawfully may provide "local service only" to their customers.

In Motions to Dismiss filed in the subject lawsuit, GTE Florida Incorporated and Sprint-Florida Incorporated (two representative Defendants who are also local exchange carriers), attached their "filed tariff rates" as Exhibits, purportedly in support of their position that the filed tariff rates control and the filed tariff rates **require** that long distance service he coupled with local service on all lines and in all events. ***(See*** filed tariffs of GTE Florida Incorporated and Sprint-Florida Incorporated which are attached as exhibits **1** and 3 to Exhibit "E'.) Quite the contrary. The filed rates nowhere set out a **requirement** that long distance service be coupled with local service on all lines and in **all** events.

Similarly, in the subject lawsuit, GTE has argued that the Act specifically requires that local exchange providers couple local service on all lines and in all events. Refemng to 47 U.S.C. § **251,** GTE has stated, "The FCA and the **1996** TCA simply do not provide any LEC with the option of offering a "local-only" telephone line". This argument is as false as the above argument regarding

the filed tariffs requiring long distance service. The Act, in 47 U.S.C. §251 provides as follows:

> (g) Continued enforcement of exchange access and interconnection requirements. On and after the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996], each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996] under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission

This section has little to do with the issues presently brought before the FCC and set out in the subject lawsuit. It clearly requires that a local exchange provider **must be able** to provide connections to an interexchange provider **to its customers.** The language of the statute does not, on its face, appear that the customer actually be connected to **an** interexchange provider, but rather, that the local exchange provider must stand ready and able to make such service available as requested. Further, if this tribunal should find that a local exchange carrier must actually connect its customer to an interexchange provider in order to comply with this provision of the Act, then the language is clear in designating the **customer** as the object of protection, not all of the customer's lines in all events. The customer is fully protected for the purposes of the statute under this interpretation if one or more lines to the customer have access to an interexchange provider. All lines in such case do not have to have long distance access and it certainly is not required that the service be provided where

the customer specifically and emphatically disclaims such long distance service. The term customer is by no means a misnomer. Although telephone service and all the related services that are today available over telephone lines are wonderful conveniences and add, in varying degrees, to the quality of our modem life, telephone service itself is not mandated. The customer has a right in the first instance to choose to have telephone service **or** not. Next, the customer may choose from any one of a number of local exchange providers, as any other customer purchasing any other service. Long distance service is an additional service. The customer may choose among a variety of interexchange providers and, presumably, the customer may still choose whether or not to have long distance service at all. Personal computers are commonplace in households today. The internet services most commonly used provide access to the internet through a local modem call. The customer who has a separate line for modem use has no need for long distance service provider. If the local exchange provider, as Plaintiffs claim GTE has done, routinely assigns an interexchange carrier to such a modem line, the customer will be billed for this availability, whether it is need, wanted or has been contracted. The customer first learns that an interexchange carrier has been provided only upon receipt of a separate bill. If the interexchange carrier is also a local exchange carrier, the customer will have less of a chance to discover the useless long distance service, as the charges are buried in their monthly bill. Plaintiff discovered that she was being charged for long distance service on her modem line when AT&T sent her a bill for the "minimum monthly" charge. Upon contacting GTE, the company suggested that she could use GTE as her interexchange carrier at no charge. This agreement lasted a few short months before GTE started charging her the "minimum monthly" charge.

Defendants' practices of providing an interexchange carrier whether or not the customer needs one and whether or not the customer specifically requests that they not have one results in untold numbers customers of GTE, AT&T, Sprint, MCI (and other local and interexchange carriers) paying a "minimum monthly" charge for a service they neither want nor need. The only beneficiaries of this practice are the carriers themselves.

Accordingly, Plaintiff requests that the FCC make a determination that local exchange providers are not required by the Act, generally, the GTE Florida Incorporated and Sprint-Florida Incorporated are not specifically required by their filed tariffs to absolutely provide for all lines and in all events an interexchange carrier and such service shall be at the customer's option and provided only with the customer's consent.

c. Long distance service is not required to be coupled with local service in all events and as to all tines and the practice of forced coupling of such services Violates the Act.

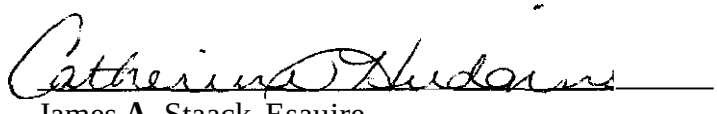
Petitioner believes that the FCC must find that the Act and the filed tariffs of Defendants do not require that local exchange carriers provide an interexchange carrier for any customer line especially where the customer is requesting the line specifically for use with a computer modem, or strictly for an answering machine or some other reasonable use of the customer's phone line not requiring long distance service.

Section 201(b) of the Act prohibits business practices that are unreasonable and unjust. Forcing the coupling of local service with long distance service where such long distance service is (I) not requested by the customer, (ii) not needed by the customer for a given line and (iii) unused, resulting in the customer being billed a minimum monthly charge for such long distance service is

clearly unreasonable and unjust. Further the carriers do not ask whether or not the customer desires long distance service, worse, the carriers ignore the customer when told that the intended **use** of a line is for local service only; this is the purest form of a negative option contract. The long distance service is provided and it is left up to the customer to discover it is being billed for the unneeded service and take action to stop the billing. Here, the Defendants in some instances stop the interexchange service, in other instances they tell the customer that long distance service must be coupled with their local line and the service cannot be terminated, in still other instances, **as** with the Petitioner, GTE represents that if GTE is selected as the interexchange carrier GTE will not charge anything for the service if not used. **As** is described above, the Petitioner's experience was that GTEs promise not to bill for the unneeded service was short lived. After a few months, GTE began billing the minimum monthly charge. **As** a result of the conduct of Defendants, their customers are not treated uniformly and this inconsistent conduct is, in and of itself, an unreasonable and unjust business practice. Also, **as** a result of the conduct of Defendants, countless customers have paid and continue to pay a minimum monthly charge for long distant service that they do not want and do not need, a service that they have not contracted for or requested, but have tried to disclaim.

Accordingly, Plaintiff requests that the FCC make a determination that the forced coupling of long distance service with a local service line where the local service carrier and/or the interexchange carrier know or should know that the line is intended by the customer for local service only, such as a computer modem line constitutes an unjust and unreasonable business practice in violation of the Act.

Respectfully submitted,
STAACK, SIMMS & HERNANDEZ, P.A.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded on this 6th day of June, 2002, to:

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL DIVISION
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

LINDA THORF'E,

Representative Plaintiff,

vs.

GTE CORPORATION, GTE FLORIDA INCORPORATED, AT&T CORP., SPRINT-FLORIDA, INCORPORATED, and MCI WORLDCOM NETWORK SERVICES, INC.

Defendants.
_____/

Civil Case No. 0003537
Division A

COMPLAINT

The Plaintiff, LINDA THORPE (hereinafter referred to as "Plaintiff"), on her own behalf and on behalf of all others similarly situated, sues the Defendants, GTE CORPORATION, GTE FLORIDA INCORPORATED, AT&T CORP., SPRINT-FLORIDA, INCORPORATED, and MCI WORLDCOM NETWORK SERVICES, INC. and alleges:

GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS

1. At all times material hereto, Defendant GTE CORPORATION is a New York Corporation which does business in the State of Florida and is engaged in providing local and long distance telephone services in Florida and elsewhere throughout the United States. GTE CORPORATION is the parent corporation of Defendant, GTE FLORIDA INCORPORATED, and controls said GTE FLORIDA INCORPORATED.

STAACK. SIMMS & HERNANDEZ, P.A.. Attorneys
121North Osceola Avenue, 2nd Floor, Clearwater, FL 33755

EXHIBIT A

2. At all times material hereto, Defendant GTE FLORIDA INCORPORATED is a Florida corporation engaged in providing local and long distance telephone communication services in Florida, having its principal place of business at 201 North Franklin Street, Tampa, Florida.

3. Defendants GTE CORPORATION, GTE FLORIDA INCORPORATED and SPFWT-FLORIDA, INCORPORATED provide both long distance and local telephone services in the State of Florida and elsewhere throughout the United States. GTE also provides computer Internet access services in the same geographic areas. (Defendants GTE CORPORATION and GTE FLORIDA INCORPORATED being hereinafter collectively referred to as "GTE".) (GTE CORPORATION, GTE FLORIDA INCORPORATED and SPRINT-FLORIDA, INCORPORATED being hereinafter referred to as "Local Service Providers" and where appropriate and collectively with the other Defendants herein as "Long Distance Providers".)

4. At all times material hereto, Defendant SPRINT-FLORIDA, INCORPORATED is a Florida Corporation which does business in the State of Florida and is engaged in providing local and long distance telephone services in Florida and elsewhere throughout the United States, having its principal place of business at 6500 Sprint Parkway, Overland Park, Kansas.

5. At all times material hereto, Defendant AT&T CORP. is a New York Corporation which does business in the State of Florida and is engaged in providing long distance telephone services in the State of Florida and elsewhere throughout the United States, having its principal place of business at 412 Mt. Kemble Avenue, Morristown, New Jersey.

6. At all times material hereto, Defendant MCI WORLDCOMNETWORK SERVICES, INC. is a Delaware Corporation which does business in the State of Florida and is engaged in

providing local and long distance telephone services in Florida and elsewhere throughout the United States, with its principal place of business at 1801 Pennsylvania Avenue NW, Washington, D.C.

7. Defendants GTE, AT&T CORP., SPRINT-FLORIDA, INCORPORATED and MCI WORLDCOM NETWORK SERVICES, INC. provide long distance telephone services in the State of Florida and elsewhere throughout the United States. (Defendants GTE, AT&T CORP., SPRINT-FLORIDA, INCORPORATED and MCI WORLDCOM NETWORK SERVICES, INC. being hereinafter collectively referred to as "Long Distance Providers".)

8. At all times material hereto, Plaintiff is an individual residing in Hillsborough County, Florida.

9. Sometime in 1997 or 1998, at the request of Plaintiff, GTE installed an extra phone line in her home. It was Plaintiffs intention to use the line almost exclusively for an answering machine and not for making telephone calls.

10. Upon the installation of said line, GTE, without discussion or communication of any kind with Plaintiff, arbitrarily assigned AT&T as the Long Distance Service Provider.

11. In or about December of 1998, Plaintiff acquired a computer system and elected to use the subject phone line as a "dedicated line" to be used exclusively over her computer modem for local computer services.

12. Upon receipt of her January 4, 1999 bill relating to the subject phone line, Plaintiff noted that she had been charged for a long distance phone call. Since she would no longer be needing long distance service over the subject line as it would then be used exclusively for dialing local computer services, Plaintiff phoned GTE and requested that her long distance service be

terminated as to the subject line. Representatives and agents of GTE misrepresented to Plaintiff that she was required to have long distance service associated with the subject line, whether or not she had any use for it. A copy of Plaintiffs January 4, 1999 phone bill is attached as **Exhibit "A"** hereto and made a part hereof.

13. Sometime in early March of 1999, Plaintiff received her March 4, 1999 phone bill from GTE. Although Plaintiff had used the subject line exclusively for local modem dial-ups, this bill reflected charges from AT&T for long distance services identified as "Carrier Line" and "Universal Connectivity". A copy of Plaintiffs March 4, 1999 phone hill is attached as **Exhibit "B"** hereto and made a part hereof.

14. Once again, Plaintiff phoned GTE to complain that she was being billed for long distance service even though she **was** not using it and had no use for it. Agents and representatives of GTE, again, misrepresented to Plaintiff that long distance service is required, however, they advised Plaintiff that if she would switch to GTE as her long distance service provider, there would be no minimum monthly service charge such as that charged by AT&T.

15. Plaintiff elected to switch to GTE as her long distance service provider. GTE acknowledged this change by way of letter dated March 31, 1999, a copy of which is attached as **Exhibit "C"** hereto and made a part hereof.

16. For the four months next ensuing, Plaintiff was not billed for long distance service, however, her September **4,** 1999 bill and all subsequent bills reflect a $3.00 minimum charge for long distance service. A copy of said September 4, 1999 bill is attached as **Exhibit "D"** hereto and made a part hereof.

17. In or about April of **1999,** Plaintiff arranged with Defendant GTE for computer Internet services over the subject line. All Defendants offer similar "online access" services either directly or through affiliates.

18. All Defendants are fully aware that home computers using phone lines **as** modem lines are nearly exclusively used by persons such as Plaintiff utilizing Internet and other services which require a local dial up only and do not require long distance service.

19. There is no statutory or other requirement that a given local phone line have long distance capability.

20. Defendants, Local Service Providers, make no effort to disclose to consumers that it is not necessary to have long distance service for a phone line being used for a computer modem, instead, they routinely and arbitrarily assign such lines to Defendants, Long Distance Providers.

21. Only where a consumer discovers a charge on a monthly bill, contacts Defendants and insists that the long distance service be terminated will Defendants cancel the long distance service, but without refund.

22. Such "negative option" or "default" sales for the said unnecessary and unwanted long distance service are made on an ongoing basis by Defendants.

23. Defendants' customers who did not affirmatively request to have services discontinued were deemed to have "contracted" for and were charged for the unnecessary and unwanted long distance service in their monthly bills.

24. In none of these purported "contracts" did Defendants set forth the essential terms, conditions, limitations, and exclusions in such a manner as to form **a** definite and certain contract offer capable of acceptance.

25. Defendants are fully aware that because they use the deception of a "negative option" or "default" contract for the unnecessary and unwanted long distance service, the customer, statistically, may not realize that he or she is being billed for and is paying for the unnecessary and unwanted long distance service for an extended period of time.

26. Defendants were fully aware that they were charging Plaintiff for the unnecessary and unwanted long distance service although Plaintiff had not requested or contracted for same.

CLASS REPRESENTATION ALLEGATIONS

27. This action is brought by Plaintiff as a class action on her own behalf and on behalf of all others similarly situated under provisions of Rule 1.220 of the Florida Rules of Civil Procedure, for injunctive relief and for damages.

28. The proposed class represented by Plaintiff, and as to which she is a member, consists of all those persons who are now or who were Defendants' customers, wherever situated, who have paid Defendants under "negative option" or "default" contracts for the unnecessary and unwanted long distance service on a computer modem line ("Class Members or the Class" herein).

29. The exact number of the members of the Class is not known, however, because Defendants are leaders nationwide in providing local and long distance telephone services, it is estimated that there are thousands of members of the Class. The Class is *so* numerous that joinder of the individual members of the Class herein is impractical.

30. There are common questions of law and fact in the actions that relate to and affect the rights of each member of the Class that predominate over any individual issues, and the relief sought is common to the members within the Class.

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31. The claims advanced by the Plaintiff are typical of the claims of each member of the Class in that the Plaintiff was a customer of Defendants and has paid Defendants charges incurred as a result of Defendants' "negative option" or "default" contract for the unnecessary and unwanted long distance service without having consented to or contracted for such charges .

32. The Plaintiff will fairly and adequately protect and represent the interest of each member of the Class, seek recovery on their own behalf and on behalf of all the members of the Class, and the Plaintiff agrees to act as class representative for the Class. Additionally, Plaintiff is committed to protect vigorously the rights of the Class and will do so fairly and adequately.

33. As to all claims for injunctive relief set out hereinbelow and pursuant to Fla.R.Civ.P. 1.220(b)(2), Defendants have acted or refused to act on grounds generally applicable to all members of the Class, thereby making final injunctive relief concerning the Class as a whole appropriate, in that a ruling as to Plaintiff will affect all members of the Class.

34. As to all claims for damages set out hereinbelow and pursuant to Fla.R.Civ.P. 1.220(b)(3), the claims of Plaintiff are not maintainable as a class action under the provisions of Fla.R.Civ.P. 1.220(b)(1)(A) or (B), however, the questions of law and fact common to the claims of the Plaintiff and the claims of each member of the Class as a whole predominate over any questions of law or fact affecting only individual members of the Class, and class representation is superior to all other available methods for the fair and efficient adjudication of this controversy.

35. It is desirable to concentrate the litigation of all claims of Plaintiff and the members of the Class in the state of Florida in this forum.

36. Potential class management difficulties are insignificant weighed against the impossibility of affording adequate relief to the Plaintiff and members of the Class through numerous separate actions.